

By: Button

H.B. No. 3772

A BILL TO BE ENTITLED

1 AN ACT
2 relating to operation of the Texas leverage fund program
3 administered by the Texas Economic Development Bank.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 489.105(b), Government Code, is amended
6 to read as follows:

7 (b) The fund consists of:

8 (1) appropriations for the implementation and
9 administration of this chapter;

10 (2) investment earnings under the capital access fund
11 established under Section 481.402;

12 (3) fees charged under Subchapter BB, Chapter 481;

13 (4) interest earned on the investment of money in the
14 fund;

15 (5) fees charged under this chapter;

16 (6) investment earnings from the programs
17 administered by the bank;

18 (7) amounts transferred under Section 2303.504(b), as
19 amended by Article 2, Chapter 1134, Acts of the 77th Legislature,
20 Regular Session, 2001;

21 (8) investment earnings under the Texas product
22 development fund under Section 489.211;

23 (9) investment earnings under the Texas small business
24 incubator fund under Section 489.212;

1 (9-a) amounts made available to the bank for the bank's
2 costs of administering the Texas leverage fund program under
3 Subchapter E; and

4 (10) any other amounts received by the state under
5 this chapter other than under Subchapter E.

6 SECTION 2. Chapter 489, Government Code, is amended by
7 adding Subchapter E to read as follows:

8 SUBCHAPTER E. TEXAS LEVERAGE FUND

9 Sec. 489.251. DEFINITION. In this subchapter, "leverage
10 fund" means the Texas leverage fund established by Section 489.252.

11 Sec. 489.252. TEXAS LEVERAGE FUND. (a) The Texas leverage
12 fund is created as a trust fund held outside the state treasury by
13 the comptroller as trustee. The comptroller shall hold money in the
14 fund in escrow and in trust for and on behalf of the bank and the
15 owners of obligations issued under Section 489.253.

16 (b) The leverage fund consists of:

17 (1) proceeds from the issuance of obligations under
18 Section 489.253;

19 (2) payments of principal and interest on loans made
20 under this subchapter;

21 (3) loan origination fees imposed on loans made under
22 this subchapter; and

23 (4) any other money received by the bank under this
24 subchapter.

25 (c) The leverage fund may be used only:

26 (1) to make loans to economic development corporations
27 for eligible projects as authorized by Chapters 501, 504, and 505,

1 Local Government Code;

2 (2) to pay the bank's necessary and reasonable costs of
3 administering the program established by this subchapter,
4 including the payment of letter of credit fees and credit rating
5 fees;

6 (3) to pay the principal of and interest on
7 obligations issued under Section 489.253;

8 (4) to pay reasonable fees and other costs incurred by
9 the bank in administering the fund; and

10 (5) for any other purpose authorized by this
11 subchapter.

12 (d) The bank may provide for the establishment and
13 maintenance of separate accounts or sub-accounts in the leverage
14 fund, including interest and sinking accounts, reserve accounts,
15 program accounts, or other accounts. The accounts and sub-accounts
16 must be kept and held in escrow and in trust as provided by
17 Subsection (a).

18 (e) Pending use, the comptroller may invest and reinvest the
19 money in the leverage fund in investments authorized by law for
20 state funds.

21 Sec. 489.253. REVENUE-BASED OBLIGATIONS AUTHORIZED. (a)
22 The bank, the office, or the office's successor agency may provide
23 for the issuance, sale, and retirement of obligations in the form of
24 commercial paper notes to provide funding for economic development
25 purposes as authorized by Section 52-a, Article III, Texas
26 Constitution, and this subchapter.

27 (b) The obligations must be special obligations of the bank

1 and the principal of and interest on the obligations must be payable
2 solely from the revenues derived by the bank and secured by a pledge
3 of the local economic development sales and use tax revenues
4 imposed by municipalities for the benefit of economic development
5 corporations created under Chapters 504 and 505, Local Government
6 Code. The obligations may not constitute an indebtedness of this
7 state, the office, or the bank in the meaning of the Texas
8 Constitution or of a statutory limitation. The obligations may not
9 constitute a pecuniary liability of this state, the office, or the
10 bank or constitute a charge against the general credit of this state
11 or its taxing power, the office, or the bank. The limitations
12 provided by this subsection must be stated plainly on the face of
13 each obligation.

14 (c) The executive director of the office by resolution may
15 provide for the obligations to:

16 (1) be executed and delivered at any time as a single
17 issue or as several issues;

18 (2) be in any denomination and form, including
19 registered uncertificated obligations not represented by written
20 instruments and commonly known as book-entry obligations, the
21 registration of ownership and transfer of which the bank shall
22 provide for under a system of books and records maintained by a
23 financial institution serving as trustee, paying agent, or bond
24 registrar;

25 (3) be of a term authorized by the executive director;

26 (4) be in coupon or registered form;

27 (5) be payable in installments and at a time or times

1 not exceeding the term authorized by applicable law;
2 (6) be subject to terms of redemption;
3 (7) be payable at a place or places;
4 (8) bear no interest or bear interest at any rate or
5 rates, fixed, variable, floating, or otherwise determined by the
6 bank or determined under a contractual arrangement approved by the
7 executive director, except that the maximum net effective interest
8 rate, computed in accordance with Section 1204.005, on the
9 obligations may not exceed a rate equal to the maximum annual
10 interest rate established by Section 1204.006; and
11 (9) contain provisions not inconsistent with this
12 subchapter.

13 (d) Obligations issued under this section are subject to
14 review and approval by the attorney general in the same manner and
15 with the same effect as provided by Chapters 1202 and 1371.

16 (e) This state pledges to and agrees with the owners of any
17 obligations issued under this section that this state will not
18 limit or alter the rights vested in the bank to fulfill the terms of
19 any agreements made with an owner or in any way impair the rights
20 and remedies of an owner until the obligations, together with any
21 premium and the interest on the obligations, with interest on any
22 unpaid premium or installments of interest, and all costs and
23 expenses in connection with any action or proceeding by or on behalf
24 of the owners, are fully met and discharged. The bank may include
25 this pledge and agreement of this state in any agreement with the
26 owners of the obligations.

27 Sec. 489.254. OBLIGATION SALE AND ISSUANCE. (a)

1 Obligations issued under Section 489.253 may be sold at public or
2 private sale at a price and in a manner and from time to time as the
3 executive director of the office's resolutions authorizing
4 issuance of the obligations provide.

5 (b) From the proceeds of the sale of the obligations, the
6 bank may pay expenses, premiums, and insurance premiums that the
7 bank considers necessary or advantageous in connection with the
8 authorization, sale, and issuance of the obligations.

9 (c) In connection with the issuance of its obligations, the
10 bank may exercise the powers granted to the governing body of an
11 issuer in connection with the issuance of obligations under Chapter
12 [1371](#).

13 Sec. 489.255. AGREEMENTS IN OBLIGATIONS. (a) The
14 resolution under which the obligations are authorized to be issued
15 under Section 489.253 or a security agreement, including a related
16 indenture or trust indenture, may contain any agreements and
17 provisions customarily contained in instruments securing
18 obligations, including provisions respecting the fixing and
19 collection of obligations, the creation and maintenance of special
20 funds, and the rights and remedies available, in the event of
21 default to the holders of the obligations or to the trustee under
22 the security agreement, all as the bank considers advisable and
23 consistent with this subchapter. However, in making such an
24 agreement or provision, the bank may not incur a pecuniary
25 liability or a charge on the general credit of the bank, the office,
26 or this state or against the taxing powers of this state.

27 (b) The resolution of the bank authorizing the issuance of

1 the obligations and a security agreement securing the obligations
2 may provide that, in the event of default in payment of the
3 principal of or interest on the obligations or in the performance of
4 an agreement contained in the proceedings or security agreement,
5 the payment and performance may be enforced as provided by Sections
6 403.055 and 403.0551, by mandamus, or by the appointment of a
7 receiver in equity with power to charge and collect obligations and
8 to apply revenues pledged according to the proceedings or the
9 provisions of the security agreement. A security agreement may
10 provide that in the event of default in payment or the violation of
11 an agreement contained in the security agreement it may be
12 foreclosed by proceedings at law or in equity and that a trustee
13 under the security agreement or the holder of an obligation it
14 secures may become the purchaser at a foreclosure sale, if the
15 trustee or holder is the highest bidder.

16 (c) A breach of a security agreement does not constitute:

17 (1) a pecuniary liability of this state, the office,
18 or the bank; or

19 (2) constitute a charge against the general credit of
20 this state or its taxing power, the office, or the bank.

21 (d) The trustee or trustees under a security agreement or a
22 depository specified by the security agreement may be any person
23 that the bank designates, regardless of whether the person is a
24 resident of this state or incorporated under the laws of the United
25 States or any state.

26 Sec. 489.256. REFUNDING OBLIGATIONS. (a) Obligations
27 issued under Section 489.253 may be refunded by the bank by the

1 issuance of the bank's refunding obligations in the amount that the
2 bank considers necessary to refund the unpaid principal of the
3 refunded obligations, together with any unpaid interest, premiums,
4 expenses, and commissions required to be paid in connection with
5 the refunded obligations. Refunding may be effected whether the
6 refunded obligations have matured or are to mature later, either by
7 sale of the refunding obligations or by exchange of the refunding
8 obligations for the refunded obligations.

9 (b) A holder of refunded obligations may not be compelled to
10 surrender the obligations for payment or exchange before the date
11 on which the obligations are payable, or, if the obligations are
12 called for redemption, before the date on which they are by their
13 terms subject to redemption.

14 (c) Refunding obligations having a final maturity not to
15 exceed that permitted for other obligations issued under Section
16 489.253 may be issued under the same terms and conditions provided
17 by this subchapter for the issuance of obligations or may be issued
18 in the manner provided by statute, including Chapters [1207](#) and
19 [1371](#).

20 Sec. 489.257. OBLIGATION PROCEEDS; USE OF LEVERAGE FUND.

21 (a) The proceeds from the sale of obligations issued under this
22 subchapter may be applied only for a purpose for which the
23 obligations were issued, except that any premium or secured
24 interest received in the sale shall be applied to the payment of the
25 principal of or interest on the obligations sold and, if a portion
26 of the proceeds is not needed for a purpose for which the
27 obligations were issued, that portion shall be applied to the

1 payment of the principal of or interest on the obligations.

2 (b) The bank is authorized to use money in the leverage fund
3 for the purposes specified in and according to the procedures
4 established by this subchapter, and this state may not take any
5 action with respect to the leverage fund other than as this
6 subchapter specifies and the resolutions of the executive director
7 of the office specify.

8 Sec. 489.258. OBLIGATIONS AS LEGAL INVESTMENTS FOR
9 FIDUCIARIES AND OTHER PERSONS. (a) Obligations of the bank issued
10 under this subchapter are securities in which all public officers
11 and bodies of this state; municipalities; municipal subdivisions;
12 insurance companies and associations and other persons carrying on
13 an insurance business; banks, bankers, trust companies, savings and
14 loan associations, investment companies, and other persons
15 carrying on a banking business; administrators, guardians,
16 executors, trustees, and other fiduciaries; and other persons
17 authorized to invest in other obligations of this state may invest
18 funds, including capital, in their control or belonging to them.

19 (b) Notwithstanding any other provision of law, the
20 obligations of the bank issued under this subchapter are also
21 securities that may be deposited with and received by public
22 officers and bodies of this state and municipalities and municipal
23 subdivisions for any purpose for which the deposit of other
24 obligations of the state are authorized.

25 SECTION 3. The Texas leverage fund program as amended by
26 this Act authorizes the continued operation of the program that was
27 established by the September 9, 1992, master resolution of the

1 Texas Department of Commerce under Chapter 4 (S.B. 223), Acts of the
2 71st Legislature, Regular Session, 1989 (codifying authority of the
3 former Texas Department of Commerce to issue revenue bonds under
4 former Sections 481.052 through 481.058, Government Code), as
5 amended by Chapter 1041 (S.B. 932), Acts of the 75th Legislature,
6 Regular Session, 1997, and by Chapter 814 (S.B. 275), Acts of the
7 78th Legislature, Regular Session, 2003.

8 SECTION 4. (a) Except as provided by Subsection (b) of this
9 section, the governmental acts and proceedings of the comptroller,
10 the Texas Economic Development and Tourism Office, and the Texas
11 Economic Development Bank relating to the administration of the
12 Texas leverage fund program that occurred before the effective date
13 of this Act are validated as if the acts had occurred as authorized
14 by law.

15 (b) This section does not validate:

16 (1) an act that, under the law of this state at the
17 time the act occurred, was a misdemeanor or felony; or

18 (2) a matter that on the effective date of this Act:

19 (A) is involved in litigation if the litigation
20 ultimately results in the matter being held invalid by a final
21 judgment of a court; or

22 (B) has been held invalid by a final judgment of a
23 court.

24 SECTION 5. This Act takes effect September 1, 2017.